

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Sparboe Eagle, LLC
Wright County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2007-WS-05**

TO: Sparboe Eagle, LLC
Mark Friedow
1213 Rushridge Rd
Jefferson, IA 50129

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Sparboe Eagle, LLC (Sparboe) hereby agree to the following Administrative Consent Order (Order). Sparboe agrees to submit an as-built construction permit application and obtain the proper permits from the Department prior to any future construction.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:
David Hopper, Environmental Specialist
IDNR Field Office #2
2300 15th St SW
P.O. Box 1443
Mason City, Iowa 50401
Ph: 641/424-4073

Relating to legal requirements:
Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

II. JURISDICTION

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Issued To: Sparboe Eagle, LLC**

III. STATEMENT OF FACTS

The Department and Sparboe hereby agree to the following statement of facts:

1. Sparboe operates a nontransient noncommunity water system located at SE ¼ of Section 20, T90N, R26W, Wright County Iowa. This location is locally known as 3170 Buchanan Ave. Eagle Grove, IA 50533. This facility consists of three active wells, eight pressure tanks and an ion exchange softener. Well number 1 was drilled in 1994 to a depth of 465 feet, and is equipped with a pitless adapter and a 5 horsepower submersible pump. Well number 2 was drilled in 1996 to a depth of 490 feet, and is equipped with a pitless adapter and a 5 horsepower submersible pump. Well number 3 was drilled in 1999 to a depth of 385 feet and is equipped with a pitless adapter and 15 horsepower submersible pump. Well number 3A was drilled in March 2007 without a construction permit. This well was drilled to a depth of 425 and is capable of pumping 50 gallons per minute. All of the wells are in the Mississippian aquifer.

2. On September 22, 2004, the Department sent a letter to Sparboe which granted it permission to construct an emergency well. The letter stated that the Department had been notified by Sparboe of the problems it had encountered and the Department determined that an emergency situation existed which does not allow time for securing a well construction permit through the procedure set forth in the Iowa Administrative Code. Therefore, the Department would allow for construction of a new well without violation if Sparboe adhered to the following conditions:

1. The well must be drilled on a site found approvable by the field office in Mason City, Iowa;
2. A professional engineer must oversee the well construction. The engineer would be responsible for assuring that the well was built according to current design standards on the approved site;
3. The engineer must submit as-built plans and specifications along with the permit application schedules to the Department within 30 days of project completion. The as-built plans and specifications must meet Department requirements. The construction permit application fee must be submitted along with the as-built plans and specifications;
4. Proof of legal control of all land within 200 feet of the well must be submitted to the Department along with the plans and specifications; and
5. Construction of the well must begin within 30 days of receipt of the letter or the emergency authorization would no longer be valid.

The well was not constructed within 30 days, therefore, the emergency construction permit expired.

3. On January 19, 2005, the Department issued Sparboe a construction permit for well number 4. This permit expired if construction was not initiated within one year of

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Issued To: Sparboe Eagle, LLC**

its issuance. Construction was not initiated within that time frame consequently, the permit expired.

4. On February 27, 2006, a Public Water Supply Operation Permit Revision-PWSID NO. 9926801 was issued to Sparboe.

5. On June 20, 2007, Sparboe submitted an application for an as-built well construction permit for well number 3A to the Department.

6. On July 3, 2007, a Notice of Violation (NOV) was issued to Sparboe for failure to obtain a construction permit prior to construction of a new well. This letter reviewed a conversation between Dawson Juhl, of Sparboe, and David Hopper, an Environmental Specialist of the Department. During this conversation, Mr. Juhl stated that the pump in well number 3 had failed and that the pump installer was unable to remove the pump from the well. Therefore, it was determined that an emergency well should be drilled.

This NOV informed Sparboe that construction of a well without first obtaining a permit, from the Department, is a violation of 567 IAC 43.3(3) and condition 2 of its operation permit.

7. On July 18, 2007, the Department sent Sparboe a letter approving its use of well number 3A.

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.183(1) provides as follows:

It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department.

1. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto...

The above stated facts show noncompliance with this provision.

2. Department subrule 567 IAC 43.3(3) requires written construction permits. "No person shall construct, install, or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the director..." The above state facts show noncompliance with this provision.

3. Standard condition number 2 of Sparboe's operation permit states the following:

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Issued To: Sparboe Eagle, LLC**

NOTICE OF CHANGED CONDITIONS

You are required to report any changes in existing conditions or information on which this permit is based. If any modification or, addition to, or construction of this water system is made, you must first obtain a written construction permit from the IDNR, in accordance with 567 [IAC] Chapters 40, 41, and 43.

The above stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, the Department hereby orders and the Sparboe agrees to the following:

1. In the future prior to construction Sparboe shall obtain all permits required by the Department.
2. Sparboe shall pay an administrative penalty of \$2,100.00 to the Department within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.
2. Economic Benefit: By not delaying construction of the well until the time that a construction permit was obtained, Sparboe obtained an economic benefit. Therefore, \$500.00 is assessed for this factor.
3. Gravity of the Violation: One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Construction prior to obtaining required permits threatens the integrity of the permit and

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

Issued To: Sparboe Eagle, LLC

water supply programs; it also creates a potential threat to the groundwater. Therefore, \$600.00 is assessed for this factor.

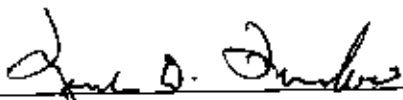
4. Culpability: Sparboe had knowledge of the regulatory requirements for obtaining construction permits since it had obtained numerous previous permits. Moreover, Sparboe had knowledge that the Department could issue emergency construction permits when a need is shown. Despite this knowledge, Sparboe proceeded with construction of well number 3A without a permit. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Sparboe. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with sections V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Mark Friedman
Director of Sparboe Eagle, LLC

Dated this 25th day of
September, 2007



Richard A. Leopold DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 28 day of
Sept, 2007

Sparboe Eagle LLC, Field Office 2, Carrie Schoenebaum, David Hopper, II.A.1.